

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

CHASE JARVIS, et al.,

## Plaintiffs,

No. C03-1265Z

V.

## MINUTE ORDER

K2 INC., a Delaware Corporation, and K-2 CORPORATION, an Indiana Corporation d/b/a K2 Sports,

## Defendants.

The following Minute Order is made by direction of the Court, the Honorable Thomas S. Zilly, United States District Judge:

(1) The Court has reviewed the papers filed in support of and in opposition to plaintiffs' motion for award of additional damages, docket no. 195, and has determined that additional briefing is needed. The parties are therefore directed to file supplemental briefs addressing the issues described below. Plaintiffs shall file an opening supplemental brief, not to exceed twenty-four (24) pages in length, by January 4, 2008. Defendants shall file a responsive supplemental brief, not to exceed twenty-four (24) pages in length, by January 18, 2008. Plaintiffs may file a supplemental reply, not to exceed twelve (12) pages in length, by January 25, 2008.

(2) Validity of May 2003 Registrations: On appeal in this matter, the United States Court of Appeals for the Ninth Circuit held that the four collage advertisements at issue, denominated as SP5, SP6, FT10, and FT11, constitute derivative works in which K2 was “undisputedly the owner of a copyright.” Jarvis v. K2 Inc., 486 F.3d 526, 532 & n.6 (9th Cir. 2007). In their motion for award of additional damages, plaintiffs assert that

1 copyrights in three of the six SP5 images (two of which are duplicated in SP6) and all seven  
2 of the FT10 images (one of which also appears in FT11) were registered in May 2003. The  
3 deposits attached to the two May 2003 registrations, however, appear to be K2's derivative  
4 (collage) images. See Trial Exh. 5 & 6 (reproduced in Exh. 4 & 5 to Neely Decl. (docket no.  
5 197)). The parties are directed to address (i) whether the May 2003 registrations are in fact  
based on K2's derivative images, and (ii) the validity of the May 2003 registrations in light  
of the Ninth Circuit's holding that K2 is the owner of copyrights in the various collage  
images.

7 (3) Negatives Related to F10 and F11 and Judicial Notice: The Court has  
8 identified within the record contact sheets made from negatives associated with some of the  
9 original photographs apparently used in FT10 and FT11. See Exh. 6A to Neely Decl. at pp.  
10 134 (frame 27), 136 (frames 5A & 6A), 137 (frames 14A & 15A), & 138 (frames 18 & 19)  
11 (docket no. 197). All of the negatives bear the label “Ilford HP5 Plus.” The parties shall  
12 indicate whether they dispute that the negatives constitute evidence of the original  
appearance of the FT10 and FT11 images at issue, or that the negatives were from black-and-  
white film. The parties shall also address how these facts, whether disputed or not, affect the  
validity of the May 2003 registrations, and whether the Court may take judicial notice of the  
fact that Ilford HP5 Plus is a black-and-white film. See Fed. R. Evid. 201(c); see also Fact  
Sheet at [www.ilfordphoto.com/products/](http://www.ilfordphoto.com/products/).

14 (4) Proof of Registration: In their motion for award of additional damages,  
15 plaintiffs have not sufficiently identified the registration deposit associated with each image  
16 used in the four collage advertisements at issue. For many of the images, plaintiffs have  
17 provided nothing more than a citation to a compact disc containing extremely poor quality  
18 copies of over a thousand negatives and/or slides. Plaintiffs are directed to specify the exact  
19 negative or slide registered with the Copyright Office, if any, for each of the images for  
20 which they claim infringement, and to provide a legible printed copy thereof. Plaintiffs are  
21 encouraged to provide the requested information in tabular form, with negatives identified by  
compact disc folder and file name, as well as contact sheet page and frame numbers, and  
slides identified by compact disc folder and file name, as well as page, column, and row  
numbers. Defendants may include in their responsive supplemental brief any additional  
argument concerning proof of registration and the Court's jurisdiction over the infringement  
claims at issue.

22 (5) Modifications to Findings of Fact: The parties have raised an issue whether the  
23 Court erred in finding that the second written agreement between the parties, dated  
24 December 13, 2001, governed the images used in the four collage advertisements. Findings  
25 of Fact and Conclusions of Law at ¶ 60 (docket no. 164). The parties are directed to address  
26 whether the finding at issue was necessary to the Court's prior rulings or to the Ninth  
Circuit's decision in this matter, whether the finding is supported by the evidence presented  
at trial, and, if not, whether the finding may be modified to comport with the documents  
adduced at trial.

(6) The Clerk is directed to RENOTE plaintiffs' motion for award of additional damages, docket no. 195, to January 25, 2008.

(7) The Clerk is further directed to send a copy of this Minute Order to all counsel of record.

Filed and entered this 6th day of December, 2007.

BRUCE RIFKIN, Clerk

/s/ Claudia Hawney

By \_\_\_\_\_  
Claudia Hawney  
Deputy Clerk